

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Three C. Realty Corp. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9-A of the Tax Law for :
the Years 1970 - 1972. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Three C. Realty Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Three C. Realty Corp.
159 Hanse Ave.
Freeport, NY 11570

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
2nd day of October, 1981.

Carmie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Three C. Realty Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9-A of the Tax Law for:
the Years 1970 - 1972.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Howard L. Kleiger the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Howard L. Kleiger
Kleiger and Kleiger
250 Broadway
New York, NY 10007

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
2nd day of October, 1981.

Carmie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 2, 1981

Three C. Realty Corp.
159 Hanse Ave.
Freeport, NY 11570

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,
Kathy Pfaffenbach

STATE TAX COMMISSION

cc: Petitioner's Representative
Howard L. Kleiger
Kleiger and Kleiger
250 Broadway
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
THREE C REALTY CORPORATION : DECISION
for Redetermination of a Deficiency or for :
Refund of Franchise Tax on Business Corporations :
under Article 9A of the Tax Law for the Years :
1970 through 1972. :

Petitioner, Three C Realty Corporation, 159 Hanse Avenue, Freeport, New York 11570, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9A of the Tax Law for the years 1970 through 1972 (File No. 11688).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 29, 1977 at 2:45 P.M. Petitioner appeared by Howard L. Kleiger, Esq. The Audit Division appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether petitioner (the lessor of a building) is subject to the disallowance, set out in section 210.12(d) of the Tax Law, of the investment credit defined in (b) of the same subsection, when the lessee is the identically-owned alter-ego of the lessor, which lessor was established by the lessee exclusively for the purpose of satisfying the requirements of the Job Development Authority, an entity of the State of New York, petitioner, therefore, not being entitled for 1970, 1971, and 1972 to the investment credit defined in section 210.12(b) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Three C Realty Corporation (hereinafter "Three C"), is a New York State real estate corporation whose sole holding is a special purpose industrial building located on Long Island in Freeport, New York.

2. On January 15, 1974, the Corporation Tax Bureau issued notices of deficiency to petitioner for the periods ended December 31 of 1970, 1971 and 1972, in the respective amounts of \$715.72, plus interest of \$121.67, \$915.71, plus interest of \$132.78 and \$867.00, plus interest of \$84.54. This resulted in a total liability of \$2,837.42 for the periods at issue. The deficiencies were based on the denial of an investment tax credit on the grounds that a "building owned by a real estate corporation rented to another does not qualify for the investment tax credit".

3. Petitioner was formed pursuant to a mortgage loan agreement between Columbia Cement Co., Inc. (hereinafter "Columbia"), a manufacturing corporation, and the Job Development Authority, an entity of the State of New York. As a condition of the loan, the Job Development Authority required that any mortgage be taken in the name of a realty corporation formed for that purpose. Columbia formed Three C in order to comply with that condition.

4. Petitioner, Three C, and Columbia are identically owned.

5. Throughout the period herein involved, petitioner leased the industrial building held in its name in Freeport, Long Island, to Columbia.

6. Petitioner's Freeport, Long Island, building was designed by Columbia and built to meet its specifications. Many of its features are useful only in the manufacture of industrial adhesives, the business in which Columbia is engaged. The building could not readily or economically be used for any other industrial purpose.

7. Petitioner, Three C, receives rental income from it's lessee, Columbia. This income is only sufficient to cover taxes and mortgage payments. Petitioner enjoys no accumulation of income, no profits, and pays no dividends to its shareholders.

8. Petitioner has never had employees of its own. Any required administrative acts were performed by Columbia.

9. Petitioner has received special permission to file a combined New York State franchise tax return with Columbia since 1973. Petitioner did not request such permission prior to 1973.

10. Petitioner's name did not appear on the Freeport, Long Island, premises; however, Columbia's name did so appear.

11. Petitioner did not pay for the insurance coverage on its premises, but Columbia did. The insurance is payable to Three C, which is not charged back for its coverage. Columbia maintained the Freeport, Long Island, building, absorbed the costs involved and did not receive any credit or charge back on rent paid to Three C. All funds in excess of the mortgage required in building and operating the Freeport, Long Island, premises were supplied by Columbia.

12. The Job Development Authority's principal concern in making a mortgage loan of the type herein involved was the involvement of the same principals as lessor and lessee. The Authority would not accept a third party ownership of realty which would create a real landlord-tenant relationship.

13. From 1970 to the present, petitioner has owned no realty other than its Freeport, Long Island, premises.

14. Petitioner took deductions for depreciation of the building.

CONCLUSIONS OF LAW

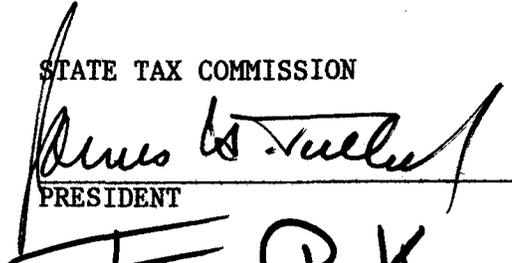
A. That section 210.12(d) of the Tax Law does not allow to a taxpayer an investment tax credit with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases to any other person or corporation. Accordingly, since petitioner's building was leased to another corporation, the building does not qualify for an investment tax credit (Matter of Petition of Ranero Corp., State Tax Commission, February 29, 1980). This conclusion is not altered by the fact that petitioner and its lessee have identical owners.

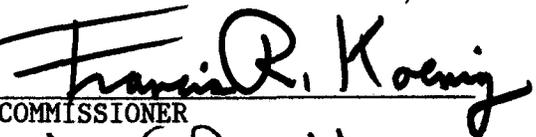
B. That the petition of Three C Realty Corporation is denied and the notices of deficiency are sustained.

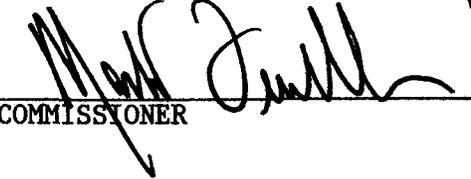
DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER